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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/737,096

12/12/2000

Michael Anthony Hyde

67058

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22242

7590

03/15/2002

FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER

WONG, LESLIE A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 03/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/737,096

Applicant(s)
Hyde et al.

Examiner
Leslie Wong

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 20) ☐ Other: _____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 18-34 are rejected under 35 U.S.C. 102(a) as being anticipated by Moran et al (EP 0997073).

Moran et al teach the preparation of fresh cheese from powdered milk (see entire document).

The recitation that the product is made by a new process, if the process were indeed new and patentable, does not render an otherwise unpatentable product new and patentable. It is pointed out that claims 18-34 are product claims and not process claims. The product must stand on its own invention, independently of the process of producing same. See *In re Marosi*, 218 USPQ 195; *In re Thorpe*, 227 USPQ 964; *Ex parte Jungfer*, 18 USPQ 2nd 1976.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moran et al (EP 0997073).

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Moran et al disclose the preparation of fresh cheese from powdered milk as is claimed (see entire document).

The claims differ as to the specific recitation of a cooling step to obtain a solid matrix.

The cooling of a product to room temperature is conventional and well-within the skill of the art, where the solidification of the product is obvious due to the melting point of the product. A product that requires refrigeration would obviously be cooled down and would not be maintained at an elevated temperature.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to cool the product of Moran et al because the cooling of a warmed product is conventional in the art.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see In re Kerkhoven 205 USPQ 1069 and In re Gershon 152 USPQ 602.

All of the claim limitations have been considered. None of them are seen as serving as basis for patentability.

No claim is allowed.

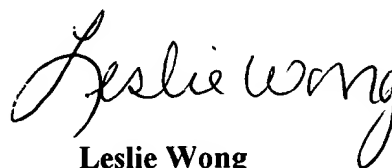
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday.

The fax number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in cursive script that reads "Leslie Wong".

Leslie Wong
Primary Examiner
Art Unit 1761

LAW
March 11, 2002